

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Chan Ouch,

Petitioner,

v.

Case No. 2:08-cv-306

Deborah Timmerman-Cooper, Warden,

Judge Michael H. Watson

Respondent.

OPINION AND ORDER

On April 9, 2008, the Magistrate Judge issued a *Report and Recommendation* under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts recommending that the instant petition for a writ of habeas corpus be dismissed without prejudice as unexhausted. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. For the reasons that follow, petitioner's objections are **OVERRULED**. This action is hereby **DISMISSED** without prejudice as unexhausted.

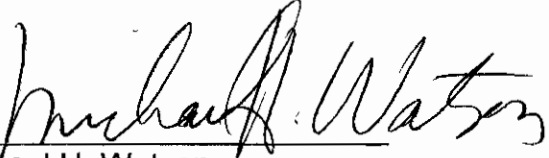
Petitioner objects to the Magistrate Judge's recommendation arguing that he has already exhausted state court remedies as to his claims because he filed an appeal of the appellate court's December 28, 2006, decision remanding his case to the trial court for an evidentiary hearing on petitioner's motion to withdraw his guilty plea, *see State v. Ouch*, 2006 WL 3805676 (Ohio App. 10 Dist. December 28, 2006), to the Ohio Supreme Court. *See State v. Ouch*, 114 Ohio St.3d 1410 (2007). Petitioner further indicates that, in an entry dated January 15, 2008, after conducting an evidentiary hearing on October 18, 2007, pursuant to the remand of the Ohio Court of Appeals, the trial court again denied petitioner's motion to withdraw his guilty plea. *Exhibits to Objections*. Petitioner further

indicates that he filed a timely appeal of that decision, which action apparently is still pending in the state appellate court. *Objections; Exhibits to Objections*. In a letter dated April 3, 2008, petitioner's attorney, indicated that he had filed the appellate brief. *See id.*

In view of the foregoing, as discussed by the Magistrate Judge, this action remains unexhausted. Petitioner's appeal is still pending. He must file an appeal of any adverse decision in the Court of Appeals to the Ohio Supreme Court in order to properly exhaust his claims.

Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of the Magistrate Judge's *Report and Recommendation*. For the reasons discussed in the *Report and Recommendation*, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED AND AFFIRMED**. This action is hereby **DISMISSED** without prejudice as unexhausted.

IT IS SO ORDERED.



Michael H. Watson
United States District Judge